UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

ESAU TORRES MENDOZA and all	§	
others similarly situated under 29	§	
U.S.C. 216(B),	§	
	§	
Plaintiff,	§	
	§	No. 3:10-cv-02436-BD
v.	§	
	§	ECF
DETAIL SOLUTIONS LLC f/k/a	§	
UPTOWN DETAIL AND SPA and	§	
CAROLE AUSTEIN, Independent	§	
Executrix of the Estate of Charles Austein,	§	
	§	
Defendants.	§	
	§	

DEFENDANT DETAIL SOLUTIONS' MOTION FOR SUMMARY JUDGMENT

Defendant Detail Solutions, LLC f/k/a Uptown Detail and Spa ("Detail Solutions") respectfully moves for summary judgment under Federal Rule of Civil Procedure 56 and Local Rules 56.3-7 of the U.S. District Court for the Northern District of Texas.

I. SUMMARY

This is an action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), by a former car washer who claims he was denied overtime during his approximately six months of employment, and was then retaliated against for complaining. Detail Solutions moves for summary judgment on the following grounds:

(1) The FLSA is inapplicable to the Defendant and, therefore, Plaintiff's claims under it fail as a matter of law. Among other things, individual and enterprise coverage under the FLSA do not apply to both Plaintiff and Detail Solutions because neither party engaged in interstate commerce.

(2) Even assuming the FLSA applies, Plaintiff's claim for back wages for alleged retaliation fails under *Hoffman Plastic Compounds*, *Inc. v. NLRB*, 535 U.S. 137 (2002) because undocumented workers such as Plaintiff may not recover such damages.

II. MATERIAL ACCOMPANYING THIS MOTION FOR SUMMARY JUDGMENT

In accordance with Local Rule 56.6, the declarations, deposition excerpts, and other evidence supporting this Motion for Summary Judgment are contained in an Appendix filed and served simultaneously with this Motion. Additionally, Detail Solutions has simultaneously filed and served a Brief in Support containing arguments and authorities demonstrating that dismissal pursuant to Rule 56 is warranted.

WHEREFORE, Defendant Detail Solutions prays that this Motion for Summary Judgment be granted and that an order be entered dismissing Plaintiff's claims in their entirety based on lack of subject matter jurisdiction under the FLSA. In the alternative, Detail Solutions prays that this Motion for Summary Judgment be granted in part, and that Plaintiff's claim for back pay damages be stricken. Detail Solutions also prays for such additional relief as the Court deems just and proper.

Respectfully submitted,

_s/Joseph R. Callister____

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ATTORNEYS FOR DEFENDANT DETAIL SOLUTIONS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon all counsel of record this 20th day of June, 2012, via U.S. first class mail as follows:

Robert Manteuffel J.H. Zidell J.H. Zidell, P.C. 6310 LBJ Freeway #112 Dallas, TX 75240 **Attorneys for Plaintiff**

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Attorneys for the Estate of Charles Austein

<u>/s/ Joseph R. Callister</u>

Joseph R. Callister